

DEPARTMENT OF THE AIR FORCE
Washington
Office of the Secretary

5 July 1961

MEMORANDUM FOR THE GENERAL COUNSEL
Department of Defense
Attention: Director, Legislative Reference Service

INFORMATION TO CHIEF, LEGISLATIVE LIAISON
Department of the Army

CHIEF OF LEGISLATIVE AFFAIRS
Department of the Navy

SUBJECT: DOD 87-118, Proposed Legislation "To further amend the Missing Persons Act to cover certain persons detained in foreign countries against their will, and for other purposes".

1. References:

a. Memorandum, Department of the Army, dated 24 April 1961, subject as above.

b. Memorandum, Department of the Navy, dated 2 June 1961, subject as above.

2. The Department of the Air Force has reviewed the above referenced memoranda and submits the following comments relative to the recommendations contained therein:

a. The citation "50 U.S.C. App. 1001 et seq" recommended in paragraph 2a(1) of the Army memorandum has been included in the Speaker letter. The other recommended changes in statutory citations, however, are not concurred in, as the Air Force prefers what it believes to be the more accurate and informative method presently used in the Speaker letter and draft of bill.

b. The recommendation in paragraph 2a(2) of the Army memorandum is not concurred in. The intent of the proposed legislation is to "clarify" rather than "expand" existing law.

c. The recommendations in paragraph 2b(3) of the Army memorandum and paragraph 5 of the Navy memorandum, that additional provisions be added to the bill to exclude from its benefits various categories of undeserving persons, are not concurred in. The present

language of the Missing Persons Act is believed adequate to cover those cases. (Note that 50 U.S.C. App. 1002 states that a person officially determined to be AWOL (under 50 U.S.C. App. 1009) is not entitled to pay and allowances.) In order to clarify this particular point, however, paragraph 3 of the Speaker letter has been modified to include a statement to the effect that the head of the department concerned can make a determination that would bar the benefits of the Act from individuals who were absent without authority, imprisoned by a court having jurisdiction under Status of Forces agreements, etc.

d. The benefits of section 13 of the Missing Persons Act (50 U.S.C. App. 1013) terminated on 13 December 1947 when the earliest limiting date for tax payment deferment was reached. It is not considered appropriate to revive, in a missing persons statute, expired benefits for members on sea duty or outside continental limits of the United States, as proposed in paragraph 2b(5) of the Army memorandum. Paragraph 3 of the Speaker letter has been modified, however, to make it clear that the proposed bill would re-establish the former policy of deferring the reporting and payment of Federal income taxes by persons who are missing (or detained). It is believed that this modification will overcome the objection contained in paragraph 4 of the Navy memorandum.

e. The recommendation in paragraph 3 of the Navy memorandum, that the need for the legislation be reviewed, is not concurred in. Informal discussions with legal representatives of other interested agencies (Treasury Department, Central Intelligence Agency, and General Accounting Office) have confirmed the view that this legislation is desirable. Requesting an official opinion from the Comptroller General would further delay processing of this proposal and, in the very probable event of a negative reply, would jeopardize the interests of personnel now carried as missing.

f. The changes recommended in paragraph 6 of the Navy memorandum, relating to the Internal Revenue Code of 1954, have been incorporated in the draft of bill.

3. Attached hereto is a revised Speaker letter (Inclosure 1) and draft bill (Inclosure 2) which reflect the foregoing comments. The Department of the Air Force recommends that this proposal be forwarded by the General Counsel, Department of Defense, to the Bureau of the Budget for its advice.

4. The legislative action officer on this matter is Lt. Colonel Verne D. J. Philips, Extension 54963.

For: *James M. McGarry, Jr.*
JAMES M. MCGARRY, JR.
Colonel, USAF
Chief, Legislation Branch
Congressional Committee Division
Office of Legislative Liaison

- 2 Inclosures
1. Revised proposed Speaker letter
 2. Draft bill

DEPARTMENT OF THE AIR FORCE
Washington

Office of the Secretary

Dear Mr. Speaker:

There is forwarded herewith a draft of legislation "To further amend the Missing Persons Act to cover certain persons detained in foreign countries against their will, and for other purposes".

This proposal is a part of the Department of Defense Legislative Program for 1961 and the Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

Purpose of the Legislation

This proposal would provide specific authority in the application of the Missing Persons Act (MPA) (50 U.S.C. App. 1001 et seq.) to persons in the Federal service whose accounts and affairs are determined under the Act, during those periods when a state of war does not exist. It would clarify the definition of "missing persons" by identifying, as an additional category, those persons who are "detained in a foreign country against his (their) will." This terminology would include any situation which would involve persons who are separated from their organizations or interrupted in their assignments by the action of a foreign power. Exceptions to this general rule would be cases in which an official determination of the head of the department concerned (50 U.S.C. App. 1009) would bar an individual from receipt of the benefits provided by the Act, i.e., absence without authority, imprisonment by a court having jurisdiction under Status of Forces agreements, etc. It would also re-establish the former policy of delay in Federal income tax reporting and payment and clarify other administrative matters pertaining to the affairs of such individuals.

The MPA now provides, among other things, for continuation of pay and allowances of persons "officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or

besieged by a hostile force". All of these terms, with the exception of the word "missing" standing alone and possibly "interned in a foreign country", if treated literally, would imply a condition of declared war. Today a person engaged in "cold war" or other governmental activity may be apprehended and held, or tried by a foreign power, with a lengthy prison term to be served in the foreign country. Specific coverage is recommended, therefore, for personnel who are lost or detained under other than wartime battle conditions.

In current administration of the Act, persons are classified as "missing" whenever the circumstances do not relate to one of the other listed categories. Although it is believed that such classification by the head of the department concerned is clearly within the intent of the Act, an administrative anomaly is created thereby. For example, the two Air Force officers who were recently released by the Soviets were carried in a missing status during their detention, although their whereabouts was known.

These situations were evidently not foreseen when the MPA was enacted. Our present interest is in obtaining clear authority for providing all the benefits of the MPA to those personnel who may be detained by a foreign power. There is no increase in benefits involved. Rather, this is a request for clarification of what is felt to be the original intent of the MPA with respect to coverage.

Cost and Budget Data

The passage of this legislation will not increase costs to the Department of Defense since we are presently applying the MPA to persons who are carried as "missing".

Sincerely,

Inclosure

Honorable Sam Rayburn

Speaker of the House of Representatives

A B I L L

To further amend the Missing Persons Act to cover certain persons detained in foreign countries against their will, and for other purposes.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled, That
3 the Missing Persons Act, as amended (50 U.S.C. App. 1001
4 et seq.), is amended as follows:

5 (1) Section 1(a) is amended--

6 (A) by striking out clauses (1) and (2) and
7 by inserting the following in place thereof:

8 "(1) a member of the uniformed services
9 as defined in section 102(a) and (b) of the
10 Career Compensation Act of 1949, as amended
11 (37 U.S.C. 231(a) and (b));" and

12 (B) by redesignating clause (3) as clause "(2)".

13 (2) Section 1(b) is amended--

14 (A) by inserting the words "Air Force," after
15 the word "Navy,"; and

16 (B) by striking out the words "paragraph (a)(3)
17 above" and inserting the words "paragraph (a)(2)
18 above" in place thereof.

19 (3) Section 2(a) is amended--

20 (A) by striking out the words "or besieged by a
21 hostile force" in the first sentence and inserting
22 the words "besieged by a hostile force, or detained
23 in a foreign country against his will" in place
24 thereof;

1 (B) by inserting the words "or employment"
2 after the word "service" in the second sentence;
3 and

4 (C) by striking out the words "or besieged by a
5 hostile force" in the last sentence and inserting
6 the words "besieged by a hostile force, or detained
7 in a foreign country against their will" in place
8 thereof.

9 (4) The first sentence of section 5 is amended--

10 (A) by striking out the words "missing or
11 missing in action" and inserting the words "entitled
12 under section 2 of this Act to receive or be
13 credited with pay and allowances" in place thereof;
14 and

15 (B) by striking out the words "being a prisoner
16 or of being interned" and inserting the words "the
17 circumstances of the continued absence" in place
18 thereof.

19 (5) Section 6 is amended--

20 (A) by striking out the words "and in the hands
21 of a hostile force or is interned in a foreign
22 country" in the first sentence; and

23 (B) by striking out the words "or missing in
24 action" in the second sentence and inserting the

1 words "under the conditions specified in section 2
2 of this Act" in place thereof.

3 (6) Section 7 is amended by striking out the words
4 "in November 1941 and any month subsequent thereto".

5 (7) Section 10 is amended by inserting the words
6 "Air Force," after the word "Navy".

7 (8) The first sentence of section 12 is amended by
8 striking out the words "missing for a period of thirty
9 days or more, interned in a foreign country, or captured by
10 a hostile force" and inserting the words "absent for a period
11 of thirty days or more in any status listed in section 2
12 of this Act" in place thereof.

13 (9) Section 13 is amended to read as follows:

14 "SEC. 13. Notwithstanding any other provision
15 of law, in the case of any taxable year beginning
16 after December 31, 1940, no Federal income tax return
17 of, or payment of any Federal income tax by--

18 "(1) a member of the uniformed services
19 as defined in section 102(a) and (b) of the
20 Career Compensation Act of 1949, as amended
21 (37 U.S.C. 231(a) and (b)); or

22 "(2) any civilian officer or employee of
23 any department;

24 who, at the time any such return or payment would
25 otherwise become due, is absent from his duty station

1 under the conditions specified in section 2 of
2 this Act, shall become due until the earlier of
3 the following dates--

4 "(A) the fifteenth day of the third month
5 in which he ceased (except by reason of death or
6 incompetency) to be absent from his duty station
7 under the conditions specified in section 2 of
8 this Act, unless before the expiration of that
9 fifteenth day he again is absent from his duty
10 station under the conditions specified in
11 section 2 of this Act; or

12 "(B) the fifteenth day of the third month
13 following the month in which an executor,
14 administrator, or conservator of the estate of
15 the taxpayer is appointed.

16 Such due date is prescribed subject to the power of
17 the Secretary of the Treasury or his delegate to extend
18 the time for filing such return or paying such tax, as
19 in other cases, and to assess and collect the tax as
20 provided in sections 6851, 6861, and 6871 of the
21 Internal Revenue Code of 1954 in cases in which such
22 assessment or collection is jeopardized and in cases
23 of bankruptcy or receivership."